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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,850	04/15/2004	Reanea Lam	023109.0004US3	2089
34284	7590	04/14/2005	EXAMINER	
ROBERT D. FISH RUTAN & TUCKER LLP 611 ANTON BLVD 14TH FLOOR COSTA MESA, CA 92626-1931			LUONG, SHIAN TINH NHAN	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/826,850	LAM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shian T. Luong	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) ☐ All    b) ☐ Some \*    c) ☐ None of:
      - 1. ☐ Certified copies of the priority documents have been received.
      - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification does not disclose the structure of a quick-release mechanism, the location of the quick-release mechanism and how the quick-release mechanism function. Clarification is required but no new matter is permitted.

3. Claims 5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, applicant used the trademark "NASCAR." It should be capitalized wherever it appears and be accompanied by the generic terminology in the specification. However, applicant cannot use the trademark in a claim and should substitute the trademark with its generic terminology. In claim 12, applicant has not disclosed the structure of a quick-release mechanism. Appropriate correction is required.

***Drawings***

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the quick-release mechanism must be

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shown or the feature canceled from claim 12. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,3,7,8,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Nicholson et al. (Des. 349,632). Nicholson et al. discloses a container having top and bottom section and

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the sections matingly engageable to define a cavity for a plurality of unwrapped pieces. The container resembles a motor vehicle with wheels. A racing related company logo and a numeral is disposed thereon.

7. Claims 1,6 are rejected under 35 U.S.C. 102(b) as being anticipated by Marini et al. (US 6,206,232). Marini et al. discloses a container having top and bottom section and the sections matingly engageable by a hinge to define a cavity for a plurality of unwrapped pieces. The container resembles a motor vehicle.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2,4-5,12,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson et al. in view of Official Notice. Nicholson et al. does not disclose a plurality of colors, trademark, quick release mechanism and numeral food pieces. However, It is well known in the art to provide different colors to the container and indicia such as trademark or numeral thereon. The articles within the container can also resemble animals or numeral. It is also well known in the art to provide a quick release mechanism to facilitate opening of the container from the lid. Hence, it would have been obvious in view of Official Notice to provide different color to the vehicle, to provide trademark to the exterior surface of the vehicle for advertising, quick

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release mechanism to facilitate opening of the container and food pieces that resembles a numeral.

10. Claims 6, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson et al. in view of Marini et al. (US 6,206,232). Nicholson et al. does not disclose a pivot coupling the top and bottom sections. But Marini et al. teaches a candy dispenser with a cover 64 and a base. The cover is pivotally attached to the base. In view of the teaching from Marini et al., one of ordinary skill in the art would readily recognize the pivotally attachment is an obvious modification for the container.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson et al. in view Katz (US D454,923) or Tsuji (US 4,753,346). Although Nicholson does not show a door coating, Katz or Tsuji teaches that providing a car door for an automobile container is a well known feature in the art and is commonly known in the automobile industry.

12. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson et al. Although it is not clear as to the number of articles within the compartment, it would have been obvious to store as many articles as desired.

13. Claim 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson in view of Cooper (D391,810). Nicholson does not disclose storing other articles such as gum or mint. However, Cooper teaches storing gum and mint within the same container. In view of Cooper, one of ordinary skill in the art would store any articles within the container of Nicholson such as mint or gum.

14. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson in view of Cooper (D391,810). Nicholson does not disclose storing other articles such as gum or

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mint. However, Cooper teaches storing gum and mint within the same container. In view of Cooper, one of ordinary skill in the art would store any articles within the container of Nicholson such as mint or gum.

15. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson in view of Seidi (Des. 405,935). Nicholson does not disclose storing other articles that resembles an automobile. However, Seidi teaches a confection showing the design of a car. It would have been obvious to store candy that is ornamental in nature for advertisement or for commercial sale.

16. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholson in view of Christie (US 1,274,003). Nicholson does not disclose a partition disposed between the food and the inner wall of the cavity. But Christie teaches a container with a partition 5 to separate the content from one cavity to another. It would have been obvious in view of Christie to provide a partition to separate the articles therein.

### ***Conclusion***

17. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.


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If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official FAX number is (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL  
April 12, 2005

  
Primary Examiner  
Shian Luong  
Art Unit 3728